IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3749 OF 2004

AND

NOTICE OF MOTION NO.725 OF 2005

IN

SUIT NO.3552OF 2004

Papeyon Developers Private Ltd. ... Plaintiff.

vs.

Dr.Eustace Joseph Roque D'Mello & others. .... Defendants.

Mr.P.K.Shroff with Subodh Joshi, Radhika Pinora, Ms.Prachi Khandge i/b. P.K.Shroff & Co., for Plaintiff.

Mr.Denzil D'Mello, for Defendant no.2.

Ms.Bhavna S. Patel i/b. Desai & Chinoy, for Defendant nos.3 to 5.

CORAM: D.K.DESHMUKH,J.

DATED: 13th January, 2006

P.C.:-

1. Notice of Motion no.3749 of 2004 has been taken out by the plaintiff. There is already an ad-interim order made on 27.1.2005. That order was conditional. The condition was that the plaintiff deposits in

the Court amount of Rs.14 crore 70 lakhs. I have been informed that the plaintiff has accordingly deposited the amount. The learned Counsel appearing for defendant no.2 states that in any case there is already a temporary injunction operating against defendant no.2 restraining him from transferring the property. The learned Counsel appearing for defendant nos.3, 4 and 5 do not have any objection to the confirmation of the ad-interim order, on the contrary they have taken out Notice of Motion no.725 of 2005 for withdrawal of 1/3rd amount from the amount deposited by the plaintiff i.e. Rs.14 crores 70 lakhs. In this view of the matter therefore, ad-interim order dt.27.1.2005 passed in notice of motion no.3749 of 2004 is confirmed. The notice of motion no.3749 of 2004 is disposed of.

2. So far as the Notice of Motion no.725 of 2005 is concerned, it is directed that the Prothonotary and Senior Master of this Court shall permit defendant nos. 3, 4 and 5 to withdraw the amount equivalent to 1/3rd of Rs.14 crores 70 lakhs on their furnishing bank guarantee of a Nationalised Bank together with the undertaking, undertaking to this Court to re-deposit the amount if so directed by this Court and on such terms and conditions including the rate of interest as may be directed by this Court. The amount remain in balance shall continue to be invested in fixed deposit in a nationalised bank during the pendency of the suit. Notice of Motion no.725 of 2005 is also disposed

of.